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11 Beck, Garrett Escartin, Kelly Holloway, Antonio
12 Laurencio, Brian Rich, Harrison Porter, Richard
13 Thomas, CCDC Sergeant Jesse Reynolds

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16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA, SOUTHERN DIVISION**

18

19 MANUEL RAMOS RODRIGUEZ,

CASE NO. 2:15-cv-1212-GMN-NJK

20

Plaintiff,

ORDER

21

vs.

22

LAS VEGAS METROPOLITAN POLICE
23 DEPARTMENT, ET AL. BECK, ALYN –
LVMPD #7459; ESCARTIN, GARRETT –
LVMPD # 9496; HOLLOWAY, K – LVMPD
#10146; LAURENCO, ANTONIO –
LVMPD#5198; RICH, BRIAN - LVMPD
#14300; PORTER, H – LVMPD # 14086;
THOMAS, RICHARD – LVMPD P# 9658;
LOMBARCO, JOE – LVMPD – SHERIFF;
MCMAHILL, KEVIN – LVMPD- UNDER
SHERIFF, REYNOLDS, LVMPD-CCDC-
SERGEANT, BROWDER, TIMOTHY –
IMC- HOSPITAL PHYSICIAN; DR. DURAN
–CCDC NAPHCARE – PHYSICIAN; DR.
ZINSER – CCDC – NAPHCARE –
PHYSICIAN, JOHN DOE – CCDC CHIEF
MEDICAL ADMINISTRATOR;

24

Defendants.

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Pending before the Court is the Motion for Summary Judgment, (ECF No. 46), filed by
26 Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Officers Alyn Beck
27 (“Beck”), Garrett Escartin (“Escartin”), Kelly Holloway, Antonio Laurencio, Brian Rich (“Rich”),

1 Harrison Porter, Richard Thomas, and Corrections Sergeant Jesse Reynolds (collectively
2 “Defendants”). Plaintiff Manuel Ramos-Rodriguez (“Plaintiff”) filed a Response, (ECF No. 54),
3 and Defendants filed a Reply, (ECF No. 61).

4 Also pending before the Court is Plaintiff’s Motion to Compel Discovery, (ECF No. 45).¹

5 Defendants did not file a response.

6 **I. BACKGROUND**

7 This case arises out of an officer-involved shooting that occurred on March 3, 2014.
8 (Second Am. Compl. at 3, ECF No. 19). That afternoon, Amilio Nevares (“Nevares”) was
9 waiting for someone to repair his sprinkler system when he saw Plaintiff rummaging through his
10 van. (Det. Clifford Arrest Report at 1, Ex. A-1 to Decl. of Robert Freeman, ECF No. 47-1).
11 Nevares yelled at Plaintiff to get out of his van at which point Plaintiff approached within six feet
12 of Nevares and aimed a small-framed black revolver at him. (*Id.*). Plaintiff demanded the keys to
13 Nevares’s van and indicated that the police were after him. (*Id.*).

14 Nevares told Plaintiff he would get his keys that were inside the house and while inside
15 told his wife to call the police. (*Id.*); (*see* Maria Nevares’s Voluntary Statement, Ex. A-4 to Decl.
16 of Robert Freeman, ECF No. 47-4). Once Nevares came back outside with the keys, Plaintiff was
17 gone. (Det. Clifford Arrest Report at 1, ECF No. 47-1). Nevares’s wife witnessed Plaintiff
18 confront and point his revolver at her husband from inside her house and subsequently called the
19 police. (*Id.*); (*see* Maria Nevares’s Voluntary Statement at 13, Ex. A-4 to Decl. of Robert
20 Freeman, ECF No. No. 47-4).

21 After leaving the Nevares residence, Plaintiff went to another individual’s house – Carmen
22 Lopez-Hernandez (“Carmen”) – and confronted her and her son demanding keys to their car. (Det.
23 Clifford Arrest Report at 2, ECF No. 47-1). Carmen refused to give Plaintiff her keys and
24 Plaintiff left after asking several times, implying that the police were after him. (*Id.*).
25 _____

26 ¹ During the hearing held on November 2, 2018, the Court found that Plaintiff has not provided
27 sufficient information identifying: (1) the necessary discovery Plaintiff is lacking, and (2) why
28 new evidence could not be sought by the discovery deadline of May 14, 2018. Accordingly,
Plaintiff’s Motion to Compel Discovery, (ECF No. 45), is **DENIED**.

1 Officer Rich responded to the call from Ms. Nevares and decided to drive north of the area
2 in search of Plaintiff. (*Id.*). When Rich arrived in the area of Vallejo Court, he witnessed Plaintiff
3 peering through windows of houses and attempting to gain entry through the front doors. (*Id.*).
4 Plaintiff did not see Rich approach, however once Rich announced his presence, Plaintiff
5 displayed a revolver and aimed it in the direction of Rich. (*Id.*). Rich took cover behind his
6 vehicle and drew his own weapon, but when he stood back up Plaintiff was running toward the
7 back wall of another residence. (*Id.*). Rich ordered Plaintiff to, “Drop the gun!” (*Id.*). However,
8 Plaintiff continued to flee eventually getting out of Rich’s line of sight. (*Id.*). Rich transmitted
9 what occurred and Plaintiff’s location to other units in the area. (*Id.*)

10 Plaintiff continued down the alleyway and towards Charleston near the I-95. (*Id.*). Officer
11 Rich circled around to the open end of the alleyway where Plaintiff would exit if he continued to
12 walk and noticed that Plaintiff was still holding his revolver. (*Id.* at 3). Officer Rich also saw
13 several other officers following closely behind Plaintiff giving Plaintiff orders. (*Id.*). Defendants
14 claim that Plaintiff did not drop the weapon and instead began to raise the weapon and point it at
15 Officers Rich and Beck. (*Id.*). Consequently, Officer Garrett Escartin fired his weapon and hit
16 Plaintiff several times. (*Id.*). Plaintiff was quickly taken into custody and transported to UMC
17 Trauma where life-saving efforts were successful. (*Id.*).

18 At the time Plaintiff confronted Nevares, he was already sought by LVMPD in connection
19 with another incident. Earlier that day, patrol officers with LVMPD responded to a call from
20 UMC Medical Center Emergency room, in reference to a male that was admitted with a gunshot
21 wound to his face. (Officer Cook’s Arrest Report at 1, Ex. A-2 to Decl. of Robert Freeman, ECF
22 No. 47-2). The victim was later identified as Ariel Ortega (“Ortega”). (*Id.*). Due to the nature of
23 his injuries the officers interviewed Ortega and the individuals who transported him to the
24 hospital. (*Id.*). After several days of investigation, LVMPD concluded that Plaintiff had shot
25 Ortega in the face. (*Id.* at 2–5).

26 On May 23, 2017, Plaintiff filed his Second Amended Complaint against Defendants
27 LVMPD and several other officers alleging Fourth, Eighth, and Fourteenth Amendment violations
28 as a result of the confrontation between LVMPD officers and Plaintiff near the I-95/Charleston

1 onramp. (Second Am. Compl., ECF No. 19); (Order, ECF No. 21). Plaintiff alleges that he was
2 shot several times by Officer Escartin after he surrendered to police, was severely injured, and
3 required a colostomy procedure to save his life. (*Id.*). After the discovery timeline concluded,
4 Defendants timely moved this Court for Summary Judgment on June 12, 2018. (ECF No. 46).

5 On November 2, 2018, the Court held a hearing on the Motion for Summary Judgment and
6 the Motion to Compel. At the close of the hearing the Court stated it would enter the instant
7 written order on the motions at issue.

8 **II. LEGAL STANDARD**

9 The Federal Rules of Civil Procedure provide for summary adjudication when the
10 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
11 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant is
12 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that may
13 affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A
14 dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return
15 a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if reasonable
16 jurors, drawing all inferences in favor of the nonmoving party, could return a verdict in the
17 nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir.
18 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A principal
19 purpose of summary judgment is “to isolate and dispose of factually unsupported claims.” *Celotex*
20 *Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

21 In determining summary judgment, a court applies a burden-shifting analysis. “When the
22 party moving for summary judgment would bear the burden of proof at trial, it must come forward
23 with evidence which would entitle it to a directed verdict if the evidence went uncontested at
24 trial. In such a case, the moving party has the initial burden of establishing the absence of a
25 genuine issue of fact on each issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden*
26 *Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In contrast, when the
27 nonmoving party bears the burden of proving the claim or defense, the moving party can meet its
28 burden in two ways: (1) by presenting evidence to negate an essential element of the nonmoving

1 party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient
2 to establish an element essential to that party's case on which that party will bear the burden of
3 proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails to meet its initial
4 burden, summary judgment must be denied and the court need not consider the nonmoving party's
5 evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

6 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
7 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
8 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
9 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
10 that "the claimed factual dispute be shown to require a jury or judge to resolve the parties'
11 differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809
12 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid summary
13 judgment by relying solely on conclusory allegations that are unsupported by factual data. *See*
14 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the
15 assertions and allegations of the pleadings and set forth specific facts by producing competent
16 evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

17 At summary judgment, a court's function is not to weigh the evidence and determine the
18 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
19 The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn in
20 his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not
21 significantly probative, summary judgment may be granted. *See id.* at 249–50.

22 **III. DISCUSSION**

23 LMVPD moves for summary judgment pursuant to Fed. R. Civ. P. 56, as to all of
24 Plaintiff's claims. Plaintiff's suit is brought pursuant to 42 U.S.C. § 1983 and includes both
25 individual and official capacity claims against the individually named Defendant police officers
26 ("Defendant Officers").

27 Section 1983 is not itself a source of substantive rights, but only a method for vindicating
28 federal rights elsewhere conferred. *See Albright v. Oliver*, 510 U.S. 266, 271 (1994). Pursuant to

1 the statute, in order to prevail in a “Section 1983” case a plaintiff must prove two elements: (1)
2 that the conduct complained of was committed by a person acting under color of state law; and (2)
3 that the conduct deprived the plaintiff of rights, privileges or immunities secured by the
4 Constitution or laws of the United States.

5 The doctrine of respondeat superior does not apply to claims brought pursuant to 42 U.S.C.
6 § 1983. *See Shaw v. State of Cal. Dep’t of Alcoholic Beverage Control*, 788 F.2d 600, 610 (9th
7 Cir. 1986). In order to pursue a civil rights individual capacity action, the plaintiff must show that
8 the official was personally involved in the alleged constitutional violation. *See Fayle v. Stapley*,
9 607 F. 2d 858, 862 (9th Cir. 1979) (dismissing Director of State Health Department in individual
10 capacity because of lack of involvement); *see also Jones v. Williams*, 297 F. 3d 930, 934 (9th Cir.
11 2002) (holding that officers cannot be liable for an allegedly unlawful search when there is no
12 direct evidence of their individual participation).

13 **A. Excessive Force Claim against Defendant Officers**

14 The Fourth Amendment guarantees individuals the right to be free from the excessive use
15 of force by law enforcement officers. *Graham v. Connor*, 490 U.S. 386, 388 (U.S. 1989). The
16 inquiry in an excessive force case is whether the officer’s conduct was objectively reasonable
17 under the circumstances. *Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005). Specifically,
18 the reasonableness of the force used must be determined from the perspective of a reasonable law
19 enforcement officer at the scene of the incident in question. *Graham*, 490 U.S. at 396.

20 The Court must balance the “nature and quality of the intrusion” on a person’s liberty with
21 the “countervailing governmental interests at stake” to determine whether the use of force was
22 objectively reasonable under the circumstances. *Id.* In *Graham*, the Supreme Court indicated that
23 relevant factors in the Fourth Amendment reasonableness inquiry include “[1] the severity of the
24 crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or
25 others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.*
26 The Court did not, however, limit the inquiry to those factors. “Because the test of reasonableness
27 under the Fourth Amendment is not capable of precise definition or mechanical application,” the
28 reasonableness of a seizure must instead be assessed by carefully considering the objective facts

1 and circumstances that confronted the arresting officers. *Id.* In some cases, for example, the
2 availability of alternative methods of capturing or subduing a suspect may be a factor to consider.
3 See *Chew v. Gates*, 27 F.3d 1432, 1441 n.5 (9th Cir. 1994).

4 The reasonableness determination in a Fourth Amendment excessive force cause of action
5 is generally reserved to the jury. *Paiva v. City of Reno*, 939 F. Supp. 1474, 1485 (D. Nev. 1996).
6 The Court must view the evidence in the light most favorable to Plaintiff and cannot grant
7 summary judgment if such evidence could support a finding of excessive force. *Smith*, 394 F.3d at
8 701. However, on a motion for summary judgment, a court may grant the motion when, in
9 viewing the evidence in the light most favorable to the nonmoving party, the force used appears
10 reasonable. See *id.* (citing *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)). Courts do not
11 weigh evidence on summary judgment but examine the state of the evidence to determine whether
12 there remain genuine issues of fact, material to resolving the issue. *Id.*

13 Here, Defendants argue that Plaintiff's Fourth Amendment excessive force claim against
14 Defendant Officers must be dismissed because each of the three (3) *Graham* factors weigh in
15 favor of the Defendant Officers. (Mot. for Summ. J. 8:22, ECF No. 46). Defendants argue that
16 leading up to the encounter between Defendant Officers and Plaintiff, Plaintiff was in violation of
17 NRS 200.380, Nevada's robbery statute.² (*Id.* 8:23–9:9)

18 Additionally, Defendants argue Plaintiff was in violation of NRS 200.471, Nevada's
19 assault statute.³ (*Id.*). Specifically, Defendants claim Plaintiff was armed with a revolver and

21² The statute provides that:

22 Robbery is the unlawful taking of personal property from the person of another, or in the
23 person's presence, against his or her will, by means of force or violence or fear of injury,
24 immediate or future, to his or her person or property, or the person or property of a member of
25 his or her family, or of anyone in his or her company at the time of the robbery. A taking is by
means of force or fear if force or fear is used to: (a) Obtain or retain possession of the
property; (b) Prevent or overcome resistance to the taking; or (c) facilitate escape.

26³ The statute provides that:

27 “Assault” means: (1) Unlawfully attempting to use physical force against another person; or
(2) Intentionally placing another person in reasonable apprehension of immediate bodily harm.
28 (footnote continued)

1 aimed his weapon at and threatened several individuals in an effort to steal their vehicles in his
2 attempt to flee the police. (*Id.* 9:10–9:24). Further, when Defendant Officers confronted Plaintiff,
3 he refused to obey their orders to drop the revolver and even aimed it towards the officers before
4 Officer Escartin opened fire. (*Id.*). In support of Defendants' contentions, they retained the
5 services of Expert Witness Ken Katsaris.⁴ Mr. Katsaris opined that Escartin's use of force was
6 reasonable because Plaintiff was armed and ignored commands, continued to walk towards a busy
7 intersection, waved his weapon in the air, and aimed his weapon at the surrounding officers. (*Id.*
8 10:7–20); (*see* Ken Katsaris Aff., Ex. A-8 to Decl. of Robert Freeman, ECF No. 47-8).

9 Plaintiff claims that Defendants cannot rely upon Defendant Officers' voluntary
10 statements that support their contentions arguing that they contain several "contradictory" and
11 "unreliable" statements. (Resp. at 6–7, ECF No. 54). In reply, Defendants point out that Plaintiff
12 failed to adequately participate in discovery and thus Plaintiff relies solely on his unsupported
13 allegations contained in his Complaint. (Mot. for Summ. J. 11:14–20). Additionally, Defendants
14 highlight that several of Plaintiff's statements in his Complaint are contradicted by his own
15 responses to LVMPD's discovery requests (e.g., Plaintiff omitted the fact that he was armed in his
16 Complaint, Plaintiff denied that he was armed in a response to a Request for Admission, but
17 admitted that he was in the process of throwing his firearm away in response to an Interrogatory
18 request). (*Id.* 11:4–13); (*see* Pl.'s Answers to Interrogs. 5:1–2, Ex. A-10 to Decl. of Robert
19 Freeman, ECF No. 47-10).

20 The evidence shows that Plaintiff held a gun up in the air, refused to comply with the
21 officer's commands, lowered the gun, and moved forward towards Officer Beck. (Alyn Beck
22 Grand Jury Testimony at 12, 17, Ex. A-8 to Resp., ECF No. 54); (*see* Officer Rich's Statement at
23 28, Ex. A-6, ECF No. 47-6) (stating that Plaintiff was fixated on Officer Rich and another officer
24 while Plaintiff was raising his firearm); (*see also* Officer Escartin Grand Jury Testimony at 25, Ex.
25

26 ⁴ Mr. Katsaris is currently a certified Florida Law Enforcement Officer/Instructor, and consultant
27 in law enforcement and corrections. He has over thirty years of experience and worked as an
28 instructor at the Florida Highway Patrol Academy. (*See* Ken Katsaris Curriculum Vitae, Ex. A-7
to Decl. of Robert Freeman, ECF No. No. 47-7).

1 A-10 to Resp., ECF No. 54) (“As I drew down my firearm still giving the subject commands he
2 began to, he had the firearm in his left hand, it was raised, he began to lower it a little bit towards
3 officer Beck and the traffic at Charleston.”). In response to Plaintiff’s refusal to comply with the
4 officers’ commands, Escartin fired four shots at Plaintiff who sustained serious injuries. (Officer
5 Escartin Grand Jury Test. at 25, Ex. A-10 to Resp., ECF No. 54); (*see* Arrest Report by Det. Mogg
6 at 3, Ex. A-1, ECF No. 47-1) (“The male, who was facing south toward Officer Beck brought the
7 gun down below his head and rocked the gun forwards toward Officer Beck at which time officer
8 Escartin fired four shots in rapid succession until the suspect fell to the ground.”). Notably,
9 Plaintiff provides a statement from Lindsay Stone, an individual who was sitting in a car at a
10 traffic light and observed the incident, which states that Plaintiff’s “arms were up the entire time.”
11 (Lindsay Stone Witness Statement, Ex. A-14 to Resp., ECF No. 54). Lindsay Stone explains that
12 Plaintiff never put the gun down and continued to move toward the officers. (*Id.*).

13 The testimony from the officers present during the shooting and eyewitness Lindsay Stone
14 show that the arresting officers were confronted by an individual who attempted to evade arrest by
15 flight, waived a gun in the air, pointed his gun at an officer, and refused to comply with the
16 officers’ commands. Furthermore, Plaintiff has not provided any evidence to refute Defendants’
17 evidence other than to state that the testimony provided is self-serving. In light of the evidence
18 presented, the Court finds that the force used appears reasonable under the circumstances.
19 Furthermore, Plaintiff failed to meet his burden to show that there is an issue of material fact, and
20 thus, summary judgment on Plaintiff’s Fourth Amendment Excessive Force claim is appropriate.

21 **B. Racial discrimination claim against LVMPD**

22 Defendants argue that Plaintiff failed to show any evidence of racial discrimination. (Mot.
23 Summ. J. 12:12–15). “To state a claim under 42 U.S.C. § 1983 for a violation of the Equal
24 Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted
25 with an intent or purpose to discriminate against the plaintiff based upon membership in a
26 protected class.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir, 1998), *cert denied*, 525 U.S.
27 1154 (1999). Defendants contend that Plaintiff failed to produce, or otherwise discover, any
28 evidence to support his claim of racial discrimination, and thus his Fourteenth Amendment claim

1 must fail. (Mot. Summ. J. 12:12–18). The Court agrees with Defendants. Plaintiff failed to
2 present evidence or rebut Defendants’ claims in his Response, (ECF No. 54), to the Motion for
3 Summary Judgment. Accordingly, Plaintiff’s claim for racial discrimination fails because he does
4 not meet his burden of proof under Fed. R. Civ. P. 56.

5 **C. Eighth Amendment violation claim against LVMPD**

6 Defendants again argue that Plaintiff failed to show any evidence of an Eighth Amendment
7 violation as a result of the incident at issue. (Mot. Summ. J. 13:1–6). A state official inflicts cruel
8 and unusual punishment by exhibiting deliberate indifference to a prisoner’s serious medical
9 needs. *Peralta v. Dillard*, 744 F.3d 1076, 1097 (9th Cir. 2014) (citing *Estelle v. Gamble*, 429 U.S.
10 97, 103–104 (1976)). Deliberate indifference, in turn requires subjective culpability, as the
11 official must know of and disregard an excessive risk to inmate health. *Farmer v. Brennan*, 511
12 U.S. 825, 837–38 (1994). Here, Plaintiff does not rebut Defendants’ claims in his Response to the
13 Motion for Summary Judgment. Similar to Plaintiff’s claim for racial discrimination, Plaintiff
14 fails to produce any evidence to support his claim of deliberate indifference or cruel and unusual
15 punishment, and thus his Eighth Amendment claim must fail. Accordingly, Plaintiff has not met
16 his burden of proof, and the Court must grant summary judgment in favor of Defendants as to
17 Plaintiff’s Eighth Amendment violation claim.

18 **D. Qualified Immunity**

19 LVMPD argues, in the alternative, that even should this Court determine that Plaintiff’s
20 Fourth and/or Eighth Amendment rights were violated as a result of the subject incident the
21 Defendant Officers are, nevertheless, entitled to Qualified Immunity. (Mot. Summ. J. 13:8–15:13).
22 To overcome a claim of qualified immunity, the plaintiff must allege facts showing that the
23 official’s conduct violated a constitutional right and must also demonstrate that the right violated
24 was clearly established. *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007). The plaintiff bears
25 the burden of proof on both points. *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002); *Cruz v.*
26 *Kauai County*, 279 F.3d 1064, 1069 (9th Cir. 2002). For a right to be clearly established, its
27 contours “must be sufficiently clear that a reasonable official would understand that what he is
28 doing violates that right.” *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting *Anderson v.*

1 *Creighton*, 483 U.S. 635, 640 (1987)). In other words, the “right must be sufficiently clear ‘that
2 every reasonable official would [have understood] that what he is doing violates that right.’”
3 *Reichle v. Howards*, 132 S. Ct. 2088, 2093, 182 L. Ed. 2d 985 (2012).

4 Here, as discussed, Plaintiff has failed to demonstrate a genuine issue of material fact as to
5 the alleged Fourth, Eighth, and Fourteenth Amendment violations.⁵ Even if Plaintiff could
6 establish an underlying constitutional violation however, Plaintiff has failed to meet its burden of
7 pointing the Court to legal authority showing that the Defendants violated clearly established law.

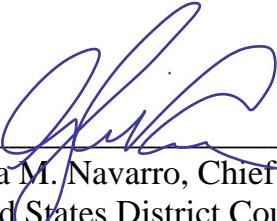
8 **IV. CONCLUSION**

9 **IT IS HEREBY ORDERED** that Defendants’ Motion for Summary Judgment, (ECF No.
10 46), is **GRANTED**.

11 **IT IS FURTHER ORDERED** that Plaintiff’s Motion to Compel Discovery, (ECF No.
12 45), is **DENIED**.

13 The Clerk of the Court is directed to enter Judgment accordingly and close the case.

14 **DATED** this 13 day of December, 2018.

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Gloria M. Navarro, Chief Judge
United States District Court
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28 ⁵ In light of this holding, Plaintiff is not entitled to punitive damages. (See Second Am. Compl. 31:18–20, 37:20–22, 41:21–23).